BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 17.07.2014
Date of Decision : 31.07.2014

Appeal No. 6 of 2014

GHCL Limited
B-38, Institutional Area,
Sector –I, Noida – 201 301.
Uttar Pradesh. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

And

Appeal No. 7 of 2014

Mr. Bhuwneshwar Mishra
B-38, Institutional Area,
Sector – I, Noida – 201 301,
Uttar Pradesh. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

And

Appeal No. 8 of 2014

Mr. Sanjay Dalmia
B-38, Institutional Area,
Sector – I, Noida – 201 301,
Uttar Pradesh. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

And

Appeal No. 9 of 2014

M/s. Carissa Investment Pvt. Ltd.
B-97, IInd Floor, Garhi,
Amritpuri, East of Kailash,
New Delhi – 110 065. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

And

Appeal No. 10 of 2014

M/s. Dear Investment Pvt. Ltd.
B-97, IInd Floor, Garhi,
Amritpuri, East of Kailash,
New Delhi – 110 065. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

And

Appeal No. 11 of 2014

M/s. Dalmia Housing Finance Ltd.
B-97, IInd Floor, Garhi,
Amritpuri, East of Kailash,
New Delhi – 110 065. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

And

Appeal No. 12 of 2014

Ilac Investment Pvt. Ltd.
B-97, IInd Floor, Garhi,
Amritpuri, East of Kailash,
New Delhi – 110 065. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

And

Appeal No. 13 of 2014

Lovely Investment Pvt. Ltd.
B-97, IInd Floor, Garhi,
Amritpuri, East of Kailash,
New Delhi – 110 065. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

And

Appeal No. 14 of 2014

M/s. Antarctica Investment Pvt. Ltd.
B-97, IInd Floor, Garhi,
Amritpuri, East of Kailash,
New Delhi – 110 065. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

And

Appeal No. 15 of 2014

M/s. Comosum Investment Pvt. Ltd.
B-97, IInd Floor, Garhi,
Amritpuri, East of Kailash,
New Delhi – 110 065. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

And

Appeal No. 16 of 2014

M/s. Alter Investment Pvt. Ltd.
B-97, IInd Floor, Garhi,
Amritpuri, East of Kailash,
New Delhi – 110 065. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

And

Appeal No. 17 of 2014

Anurag Trading Leasing & Investment Pvt. Ltd.
B-97, IInd Floor, Garhi,
Indraprakash Building,
21, Barakhamba,
New Delhi – 110 001. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …... Respondent

And

Appeal No. 18 of 2014

Archana Trading Leasing & Investment Pvt. Ltd.
IInd Floor,
Indraprakash Building,
21, Barakhamba,
New Delhi – 110 001. …. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …. Respondent

Mr. P. N. Modi, Senior Advocate with Mr. Vinay Chauhan, Mr. Neville Lashkari, Mr. K. C. Jacob, Advocates for the Appellant in Appeal nos. 6 to 8.
Mr. Vinay Chouhan, Advocate with Mr. K. C. Jacob, Advocate for the Appellant in Appeal No. 9.
Mr. Shyam Mehta, Senior Advocate with Mr. Vinay Chauhan, Mr. K. C. Jacob, Advocates for the Appellant in Appeal No. 10.
Mr. Vinay Chouhan, Advocate with Mr. K. C. Jacob, Advocate for the Appellant in Appeal Nos. 11 to 18.

Mr. Kumar Desai, Advocate with Mr. Pratham V. Masurekar, Advocate for the Respondent in Appeal Nos. 6 to 10.
Mr. Pratham V. Masurekar, Advocate for the Respondent in Appeal nos. 11 to 18.

CORAM : Justice J. P. Devadhar, Presiding Officer
Jog Singh, Member
A. S. Lamba, Member

Per : Jog Singh

1. In this bunch of 13 appeals, the Appellants have challenged impugned order dated October 25, 2013 by which monetary penalties ranging between Rs. 7 lac

to 50 lac have been imposed on each of the Appellants by separate orders passed on the same date.

2. The charge against the company i.e. GHCL Limited; against the Company Secretary Mr. Bhuwneshwar Mishra; and against Chairman namely Mr. Sanjay Dalmia, who are Appellants in **Appeal nos. 6, 7 and 8 of 2014** respectively, is mainly that they transmitted incorrect shareholding of ten promoters, who are Appellants in **appeal nos. 9 to 18 of 2014**, to the Stock Exchanges. It gave a wrong impression about the shareholding of the promoters to the general public and investors at large. The main charge against ten promoters is that they wrongly and illegally projected their shareholdings far in excess of their real shareholding by taking into consideration shareholdings of third parties as part of their own shareholding in an illegal manner.

3. Treating prima facie these actions as violative of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(f) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 2003, hereinafter referred to as PFUTP Regulations, 2003, read with Sections 12A(a), (b) and (c) of SEBI Act, 1992, a Show Cause Notice dated December 12, 2011 was issued to the Appellants seeking an explanation why appropriate action not be taken against them as per law and after holding enquiry as per the procedure envisaged under the Securities Contract (Regulations) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 for the alleged violation of provisions of the Securities Contracts (Regulation) Act, 1956, hereinafter referred to as SC(R)A, 1956, SEBI Act, 1992 and PFUTP Regulations, including some of the provisions of Listing Agreement.

4. A detailed enquiry was conducted by the Respondent as per law and in accordance with natural justice after affording reasonable opportunity of hearing

to the Appellants. The Adjudicating Officer has held the Appellants guilty of charges levelled against them and imposed various penalties on the thirteen Appellants for violations of various provisions of law particularly in terms of Section 15HA of SEBI Act, 1992 read with Section 23A and 23E of SC(R)A, 1956. These differing penalties in each case are mentioned here-in-below for the sake of convenience.

5. In **Appeal no. 6 of 2014, namely, GHCL Limited vs. SEBI,** a penalty of Rs. 50 lac has been imposed on the Appellant-company in terms of Section 15HA of SEBI Act and Section 23A and 23E of SC(R)A, 1956, for violation of Regulation 3(a),(b), (c) and (d), 4(1) and 4(2)(f) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 2003 read with Section 12A(a), (b) and (c) of SEBI Act 1992, Section 21 of SC(R)A, 1956 and Clause 35 of Listing Agreement.

6. In **Appeal no. 7 of 2014, namely, Mr. Bhuwneshwar Mishra vs. SEBI**, a penalty of Rs. 10 lac has been imposed on the Appellant, who is the Company Secretary and Compliance Officer of GHCL since January 2007 and is presently the General Manager and Company Secretary. Appellant is alleged to have colluded with promoter entities of GHCL to mislead shareholders and investors of GHCL by disclosing inflated shareholding on the basis of false claims of arrangement by promoter entities with third parties. The said penalty has been imposed in terms of Section 15HA of SEBI Act, 1992 and Section 23A and 23E of SC(R)A, 1956 for violation of Regulation 3(a),(b), (c) and (d), 4(1) and 4(2)(f) of PFUTP Regulations, 2003 read with Section 12A(a), (b) and (c) of SEBI Act.

7. In **Appeal No. 8 of 2014, namely, Mr. Sanjay Dalmia vs. SEBI**, a penalty of Rs. 25 lac has been imposed. Mr. Sanjay Dalmia, the Appellant, is stated to be a Non-Executive Chairman of GHCL Ltd. He is also alleged to have colluded with promoter entities of GHCL to mislead shareholders and investor of GHCL by making false reporting of promoter's shareholding. The Appellant, as the Chairman and promoter, was a beneficiary of such false disclosures. Said penalty has been imposed in terms of Section 15HA of SEBI Act for violation of Regulation 3(a),(b), (c) and (d), 4(1) and 4(2)(f) of the PFUTP Regulations, 2003 read with Section 12A(a), (b) and (c) of SEBI Act.

8. In **Appeal No. 9 of 2014, namely, M/s. Carissa Investment Private Ltd vs. SEBI** a penalty of Rs. 9 lac has been imposed on the Appellant who is one of the promoters of GHCL Ltd. and is an investment and finance company, primarily engaged in trading of securities in secondary and primary market. The charges pertain to disclosures made by Appellant to GHCL regarding its shareholding during 2007-2008. Penalty has been imposed in terms of Section 15A(b) of SEBI Act for violation of Regulations 7(1A) and 8(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 1997, hereinafter referred to as SAST Regulations, 1997 and Regulation13(3) and (5) of PIT Regulations, 1992 and in terms of Section 15HA of SEBI Act for violation of Regulation 3(a), (b), (c) and (d), 4(1) and 4(2)(f) of PFUTP Regulations, 2003 read with Section 12A(a), (b) and (c) of SEBI Act.

9. In **Appeal No. 10 of 2014**, **namely, M/s. Dear Investment Private Ltd. vs. SEBI**, a penalty of Rs. 7 lac has been imposed on the Appellant who is a promoter of GHCL Ltd and is an investment and finance company, primarily engaged in trading of securities in secondary and primary market. The charges pertain to disclosures made by Appellant to GHCL regarding its shareholding

during 2007-2008. Said penalty has been imposed in terms of Section 15A(b) of SEBI Act for violation of Regulations 7(1A) and 8(2) of the SAST Regulations, 1997 and 13(3) and in terms of Section 15HA of SEBI Act for violation of Regulation 3(a), (b), (c) and (d), 4(1) and 4(2)(f) of PFUTP Regulations, 2003 read with Section 12A(a), (b) and (c) of SEBI Act.

10. Similarly, in **Appeal nos. 11 of 2014 to 18 of 2014, namely M/s. Dalmia Holding Finance Ltd., 1lac Investment Pvt. Ltd., Lovely Investment Pvt. Ltd., M/s. Antarctica Investment Pvt. Ltd., M/s. Comosum Investment Pvt. Ltd., M/s. Alter Investment Pvt. Ltd., Anurag Trading Leasing & Investment Pvt. Ltd., Archana Trading Leasing & Investment Pvt. Ltd., vs. SEBI,** a penalty of Rs. 7 lac has been imposed on each of the Appellants. Appellants in these appeals are also promoters of GHCL Ltd and are investment companies and engaged in trading of securities in secondary and primary market. The charges pertain to disclosures made by Appellants to GHCL regarding its shareholding during 2007-2008. The penalty has been imposed in terms of Section 15A(b) for violation of Regulation 7(1A) and 8(2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 and in terms of Section 15HA of SEBI Act for violation of Regulation 3(a), (b), (c) and (d), 4(1) and 4(2)(f) of PFUTP Regulations, 2003 read with Section 12A(a), (b) and (c) of SEBI Act.

11. **Appeal nos. 6, 7 and 8 of 2014** have been preferred by the company, i.e. GHCL Ltd., the Company Secretary and the Chairman cum Managing Director respectively and have been argued by Shri P. N. Modi, learned Senior Counsel for the Appellants and hence are being dealt with as one group. Whereas **Appeal nos. 9 to 18 of 2014** are preferred by the promoters and have been argued by learned Senior Counsel Shri Shyam Mehta and hence are being dealt with

separately. Admittedly, the facts and circumstances of these ten appeals preferred by promoters, are same except on a additional allegation regarding violation of certain provisions of PIT Regulations, 1992 is also noted in Appeal No. 9 of 2014 (Carrisa Investment Ltd.) for which an extra penalty of Rs. 2 lac has been imposed only on Carissa.

Appeal nos. 6, 7 and 8 of 2014 - The Company, The Company Secretary and The Chairman.

12. Common case of these appellants is that the appellant company is a leading Indian producer of Soda Ash. It is a public limited company and listed on various stock exchanges i.e. Bombay Stock Exchange Ltd. (BSE), National Stock Exchange (NSE), Ahmedabad Stock Exchange (ASE). Its total issued, subscribed and paid up capital comprises of 100019286 (ten crore nineteen thousand two hundred eighty six only) shares of the face value of Rs. 10 each. It is run by professionals and has prominent persons on its Board of Directors. It is stated to have been filing the requisite shareholding pattern as per law from time to time. However, before filing of such quarterly shareholding pattern ending March 2007, the appellant company received letters from some promoter entities stating therein that the said promoters had a mutual understanding with some third parties who were actually holding shares of the appellant company in their own right to include said shares of such third parties in the name of said promoters. The promoters also submitted some letters to the appellant-company received from those third parties indicating such an arrangement.

13. The appellants sought advice from legal experts of the highest caliber who pointed that the shares of third parties could be included in the shares of promoters while disclosing the shareholding pattern to the stock exchanges. It is, therefore, contended by Shri P. N. Modi, learned senior counsel for these

appellants that the company informed all the Stock Exchanges whatsoever data / information was received by it from the promoters about the shareholding pattern as a conduit only. It is also submitted by Shri Modi that the then existing proforma prescribed by Clause 35 of the Listing Agreement did not talk of inclusion of shares which could be held by third parties / outsiders on behalf of the promoters. Because of such an ambiguity in law various legal opinions were sought by the management of the appellant company and such opinions were in favour of inclusion of such independent shares held by third parties into the shares of the promoters. Therefore, no fault could be found with the appellants in reporting the shareholding pattern for eight quarters in the years 2007-2008.

14. It is also pointed out by the appellants that on February 3, 2009 SEBI amended Regulation 8A of the SAST Regulations, 1997 by which the promoters of a company were required to disclose to the Company in the prescribed format, *interalia*, the details of their shareholding in the Company and separately disclose details of shares placed by them to third parties or otherwise encumbered. Stock exchanges were also directed to amend Clause 35 of the Listing Agreement appropriately inconsonance with amended provisions of Regulation 8A. The appellant company on February 16, 2009 itself, therefore, filed requisite disclosures with the stock exchanges in terms of the amended Regulation 8A. The appellant company was also legally advised that in view of the aforesaid amendment to the SAST Regulations, 1995 and the amendment of Clause 35 of the Listing Agreement, only those shares which were in the physical possession of the promoters should be considered as part of their shareholding and not those shares which were held by third parties. On receipt of revised shareholding from the promoters, the Appellant-company, on its own, immediately forwarded the same to the stock exchanges. The company once again addressed a letter dated April 9, 2009 to all the stock exchanges giving a

summary sheet of all previous shareholding patterns filed from March 31, 2007 to December 31, 2008 as well as the summary sheet of revised shareholding patterns for the same period under the amended law.

15. It is further argued on behalf of the appellants that despite the abovesaid, the respondent passed an ad-interim ex-parte order dated April 20, 2009 directing the appellants and 45 other parties / promoters directing not to buy, sell or deal in the securities market until further orders. On July 7, 2009, a Whole Time Member of the respondent vacated the said ad-interim ex-parte order dated April 20, 2009 as against 33 promoter entities but the present three appellants and 10 promoter entities were not spared and the debarment continued against them till March 14, 2011.

16. Thereafter, the respondent, in its separate jurisdiction, appointed an adjudicating officer who issued a Show Cause Notice dated December 12, 2011 and after holding an enquiry, passed the impugned orders imposing various monetary penalties on the Appellants as enumerated hereinabove. In this connection, Shri P. N. Modi, learned senior counsel for these Appellants relies upon following judgments and orders of this Tribunal as well as that of SEBI to bring home the point of discrimination qua the Appellants in the matter of imposition of monetary penalties in question :-

SAT's decisions

1. Appeal no.97 of 2005 dated 9/8/2005 - USB Securities Asia Ltd. vs. SEBI
2. Appeal no.60 of 2008 dated 15/10/2008 - Mega Corporation Ltd. vs. SEBI
3. Appeal no.105 of 2012 dated 4/7/2012 – UPSE Securities Ltd. vs. The Manager, Inspection Department, National Stock Exchange of India Limited (NSE)

SEBI's Orders

1. M/s. Munga Holdings Ltd., Binani Cement Ltd. dated 2nd November, 2006.
2. M/s. Vakrangee Softwares Ltd. dated 10th October, 2012.

3. M/s. Karuturi Global Limited dated 2nd July, 2013.
4. M/s. Gennex Laboratories Ltd. dated 13th September, 2013

17. Thus, the main case argued by Shri P.N. Modi, learned senior counsel on behalf of the three Appellants is that the ten promoters in question informed about their shareholding pattern to the Company and the Company, in turn, informed all the Stock Exchanges accordingly. The then existent proforma prescribed by the Regulations did not mention about inclusion of third party shares which might be held by others on behalf of the promoters. Therefore, Shri Modi submits that independent of legal opinions sought by the Company, the Appellants were well within their right to disclose their shareholding pattern by taking into consideration the shares held and owned by others.

18. At the outset, it may be noted that clause 35 of the Listing Agreement, which spells out terms and conditions to be complied by a company which seeks to get listed its shares on a Stock Exchange, to disclose to the Stock Exchange shareholding pattern of its directors. The requirement of Listing Agreement emanates from Section 21 of SC(R) Act, 1956 which requires every such company to enter into an agreement, traditionally termed as "Listing Agreement" with the Stock Exchange on which the shares are sought to be listed. Next, the purpose underlying the requirement of making regular and true disclosures by a company as regards the shares which the promoters may come to hold from time to time is to bring about greater transparency in the functioning of the companies. It is through such disclosures that the investors take an informed decision in a given situation to invest in the scrip of that company or even to exit. This is extremely important for the growth of a healthy capital market. If a particular promoter holds only 2-3 lac shares, the investors may choose not to invest any more in the company. But if the investors, for instance, possesses 50 lac shares

in his own right, the investors may be inclined to invest huge amounts in the scrip. Thus, true and correct disclosures as to the exact shareholding pattern of promoters assume greater significance.

19. Therefore, the company, the Company Secretary and the Chairman of the company have a greater responsibility on their shoulders to ensure, in a free and fearless manner, that the promoters make timely and absolutely true disclosures as regards their respective shareholding in the company in consonance with various regulations prescribed by SEBI and the Listing Agreement. In fact, the companies are required to maintain a register in this respect and if a vast variation is noted by the company, the Company Secretary and the Chairman, in the shareholding pattern of the promoters, they are duty bound to inform to the stock exchange or even to SEBI accordingly. Such acts of wrong disclosures are condemned as fraudulent and unfair trade practices. Relevant provisions of the PFUTP Regulations, 2003, SEBI Act, 1992, SC(R) Act, 1956 are reproduced hereinbelow for the sake of convenience :-

PFUTP Regulations, 2003

Prohibition of certain dealings in securities

"3. No person shall directly or indirectly –

(a) buy, sell or otherwise deal in securities in a fraudulent manner;
(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a

recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder."

Prohibition of manipulative, fraudulent and unfair trade practices

"4. (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) a to e …….

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities."

"2(b). "dealing in securities" includes an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in section 12 of the Act."

"2(c). "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
(2) a suggestion as to a fact which is not true by one who does not believe it to be true;
(3) an active concealment of a fact by a person having knowledge or belief of the fact;
(4) a promise made without any intention of performing it;
(5) a representation made in a reckless and careless manner whether it be true or false;
(6) any such act or omission as any other law specifically declares to be fraudulent, deceptive behavior by a person depriving another of informed consent or full participation;
(7) deceptive behavior by a person depriving another of informed consent or full participation;
(8) a false statement made without reasonable ground for believing it to be true;
(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled

even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly."

SEBI Act, 1992

"12A. Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control. – No person shall directly or indirectly ---

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;
(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder."

SAST Regulations, 1997

"21. Conditions for listing. – Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange."

"23A. Penalty for failure to furnish information, return, etc. – Any person, who is required under this Act or any rules made thereunder, --

(a) to furnish any information, document, books, returns or report to a recognized stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognized stock exchange, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure;
(b) to maintain books of account or records, as per the listing agreement or conditions, or byelaws of a recognized stock exchange, fails to maintain the same, shall be liable to a penalty of one lakh rupees

for each day during which such failure continues or one crore rupees, whichever is less ."

"23E. Penalty for failure to comply with provisions of listing conditions or delisting conditions or grounds. – If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees."

20. Similarly, Clause 35 of Listing Agreement and the format prescribed are also being reproduced in order to assess as to whether any ambiguity exists therein as vehemently argued by Shri Modi :-

"35. The company agrees to file the following details with the exchange on a quarterly basis, within 21 days from the end of each quarter, in the format specified as under :-

(I)(a) Statement showing Shareholding Pattern

Name of Company :

Scrip Code : *Quarter ended :*

1(a)(1)

Cate-gory code	Category of shareholder	Number of share-holders	Total number of shares	Number of shares held in dematerialized form	Total shareholding as a percentage of total number of shares	
					As a percentage of (A + B)[2]	As a percentage of (A+B+C)
(A)	Shareholding of Promoter and Promoter Group (1) Indian (a) Individuals/ Hindu Undivided Family (b) Central Government/ State Government(s) (c) Bodies Corporate (d) Financial					

	Institutions/ Banks (e) Any other (specify) Sub-total (A)(1) (2) Foregin (a) Individuals (Non-Resident Individuals/ Foreign Individuals) (b) Bodies Corporate (c) Institutions (d) Any Other (specify)					
	Sub-Total (A)(2)					
	Total					

1(a)(2)

Cate-gory code	Category of shareholder	Number of share-Holders	Total number of shares	Number of shares held in dematerialized form	Total shareholding as a percentage of total number of shares	
					As a percentage of (A + B)[2]	As a percentage of (A+B+C)
	Shareholding of Promoter and Promoter Group(A) = (A)(1)+(A)(2)					
(B)	Public shareholding[2] (1)Institutions (a) Mutual Funds / UTI (b) Financial Institutions / Banks (c) Central Government/ State Government(s) (d) Venture Capital Funds (e) Insurance Companies (f) Foreign Institutional Investors (g) Foreign Venture					

	Capital Investors (h) Any other (specify)					
	Sub-Total (B)(1)					
B	(2) Non-institutions (a) Bodies Corporate (b) Individuals – i. Individual share-holders holding nominal share capital up to Rs. 1 lakh ii. Individual share-holders holding nominal share capital in excess of Rs. 1 lakh (c) Any other (specify)					
	Sub-Total (B)(2)					
	Total Public Shareholding (B)= (B)(1)÷(B)(2)					
	Total (A) + (B)					
(C)	Shares held by Custodians and against which Depository Receipts have been issued				xxx	
	GRAND TOTAL (A)+(B)+(C)				xxx	

(I)(b) Statement showing Shareholding of persons belonging to the category "Promoter and Promoter Group"

Sr. No.	Name of the shareholder	Number of shares	Shares as a percentage of total number of shares {i.e., Grand Total (A)+(B)+(C) indicated in Statement at para (I)(a) above}
1.			
2.			
	TOTAL		

(I)(c) Statement showing Shareholding of persons belonging to the category "Public and holding more than 1 per cent of the total number of shares"

Sr. No.	Name of the shareholder	Number of shares	Shares as a percentage of total number of shares {i.e., Grand Total (A)+(B)+(C) indicated in Statement at para (I)(a) above}
1.			
2.			
	TOTAL		

(I)(d) Statement showing details of locked-in shares

Sr. No.	Name of the shareholder	Number of locked-in shares	Locked-in shares as a percentage of total number of shares {i.e., Grand Total (A)+(B)+(C) indicated in Statement at para (I)(a) above}
1.			
2.			
	TOTAL		

(II)(a) Statement showing details of Depository Receipts (Rs)

Sr. No.	Type of outstanding DR (ADRs, GDRs, SDRs, etc.)	Number of outstanding DRs	Number of shares underlying outstanding DRs	Shares underlying outstanding DRs as a percentage of total number of shares {i.e., Grand Total (A)+(B)+(C) indicated in Statement at para (I)(a) above}
1.				
2.				
	TOTAL			

(II)(b) Statement showing Holding of Depository Receipts (DRs), where underlying shares are in excess of 1 per cent of the total number of shares.

Sr. No.	Name of the DR Holder	Type of outstanding DR (ADRs, GDRs, SDRs, etc.)	Number of shares underlying outstanding DRs	Shares underlying outstanding DRs as a percentage of total number of shares {i.e., Grand Total (A)+(B)+(C) indicated in Statement at para (I)(a) above}
1.				
2.				
	TOTAL			

21. Thus, a minute perusal of provisions of Cl. 35 read with detailed format makes it abundantly clear that the law only requires promoters to mention their own shareholding which they are holding in their own right and there is no scope

for inclusion of any third party shares therein. However, an inadvertent, unintentional, minor and venial wrong reporting under clause 35 of the Listing Agreement is one thing; and a conscious and well considered decision to include huge number of shares of third parties by the promoters of the company into their shares knowing fully well that the third parties' shares do not belong to the promoters for reflecting the same in the shareholding pattern of the promoters to the Stock Exchanges under clause 35 is a very serious matter and cannot be pardoned. When common investors and general public come to know that the promoters in the case in hand, actually hold about 16 lac shares only instead of about 2.30 crore shares as wrongly reported to Stock Exchanges, their faith in the capital market is shattered. This modus operandi adopted by the Appellants and their promoters in the present case would undoubtedly amount to unfair trade practice, if not a fraud played upon the market.

22. Similarly, a simple reading of section 12(A)(a) of the SEBI Act, 1992 read with Regulation 3(a) of the PFUTP Regulations, 2003 as reproduced above clearly reveals that it is not only the fraudulent or manipulative buy or sale of securities which is prohibited but any dealing in securities "otherwise" also may be illegal and hence amounts to fraud on the market. The expression "…otherwise deal in securities…" occurring in Regulation 3(a) read with section 12A(a) of SEBI Act, 1992 is vide enough to cover cases like the one in hand where general investors are sought to be drastically misguided by the promoters of the Company by inclusion of the third parties' shares which the promoters admittedly do not own. The law is absolutely clear on this and there is no ambiguity as sought to be projected by the appellants. Whatever is not included in the Regulation has to be excluded in the interpretation.

23. In this connection, it is pertinent to note that the Company, the Company Secretary and the Chairman are not mere conduit to pass-on whatever details they receive from the promoters to the Stock Exchanges irrespective of the records maintained by the Company in respect of the shares which may be held by a promoter at given point of time. The Appellants should have acted more diligently and responsibly and should not have been guided by mere legal opinions. It is settled law that legal opinions are only advisory in nature and not binding on anyone. Therefore, no legal infirmity can be attributed to the impugned order which holds all the appellants guilty of violating the PFUTP Regulations, 2003 and imposes monetary penalties on them.

24. Now, we may turn to the orders of SEBI and some judgments of this Tribunal relied upon by Shri Modi. In the case of **M/s. Munga Holdings Ltd. and M/s. Binani Cement Ltd. dated 2nd November, 2006.**, there was merger of M/s. Munga Holdings Ltd., a listed company with M/s. Binani Cement Ltd., with effect from 1st April, 2000 but the same could be given effect to in the books of accounts in September, 2003 because of pending institutional approvals and some such other factors. Munga was formerly delisted from the stock exchange with effect from 23rd October, 2003. It, however, remained defunct after 1st April, 2000. So the question, interalia, arose about compliance with the Listing Agreement. The allegation levelled by SEBI against Munga was that it violated clauses 16, 20, 31(a)(c) and (d) 35, 41, 47(a) and (c) and 49 of the Listing Agreement. However, the primary issue in this matter before SEBI was as to whether M/s. Binani Cement Ltd. was responsible in the transactions in the scrip of Munga entered into during the period January, 2001 to August, 2001 when the merger had been approved by High Court of Kolkata but the same was not given effect to in view of stated institutional approvals and such other formalities. The learned Whole Time Member of SEBI noted that because of merger and

consequent confusion due to time consuming process involved in institutional approvals etc., the documents and other records remained with Binani Cement but Munga was actually delisted on 23rd August, 2003. Therefore, in this background, the learned Whole Time Member let off Binani Cement with a simple warning to be careful in future as regards timely compliance with various provisions of the Listing Agreement. Therefore, this case is totally distinguishable and does not help the case of the Appellant in any manner.

25. In the case of **Vakrangee Software Ltd. dated 10th October, 2012**, one Mr. Prem Meiwal and Mr. Nishikant Hayantnagarkar were shown as the promoters of the Company during certain quarters in 2008 and 2009 due to inadequate enforcement of Code of internal procedures and conduct for ensuring compliance. Said Mr. Prem Meiwal and Mr. Nishikant Hayantnagarkar were Head of Finance and Whole Time Director respectively with the Company. Therefore, their names came to be included in the promoters' category totally due to inadvertence. However, on the advice of the new Company Secretary the two names were excluded from the category of promoters. This fact was undisputed in the case of Vakrangee Software Ltd., before SEBI. The learned Adjudicating Officer in this background observed that the Company generally acts upon professional advices and by doing so it could not be said to have violated the regulatory provisions with any malafide motives. We do not see any harm in observing so by the learned Adjudicating Officer in the facts and circumstances of that case. The Adjudicating Officer rightly held in that case that the allegation of wrong filing of quarterly shareholding pattern by the Company to mislead the investors was not established in that case. Therefore, the facts of Vakrangee case are totally different and not applicable to the case in hand.

26. In the case of **M/s. Karuturi Global Limited. dated 2nd July, 2013**, due to mistake of secretarial staff one Company namely M/s. Simply Class Fashions Pvt. Ltd. was shown to be a promoter. On noticing the same, immediately a revised shareholding pattern as per clause 35 of the Listing Agreement was filed by the Company i.e M/s. Karuturi Global Limited with BSE. There was some confusion as to whether this revised report for the quarter ending September, 2004 was actually sent to BSE or not. After holding enquiry, the learned Adjudicating Officer of SEBI held that the shareholding was erroneously disclosed against the name of M/s. Simply Class Fashions Pvt. Ltd., which was actually held by one Mr. K. S. Ramakrishna who in fact held 38.98% shares of the Company. It was wrongly bifurcated and reflected 20.83% against Mr. K. S. Ramakrishna's name and 18.15% against the name of SCFPI. The learned Adjudicating Officer held that the entire 38.93% shares were genuinely held by Mr. K. S. Ramakrishna only. Therefore, due to this inadvertence on the part of secretarial staff, there could not be a change in the actual promoters' shareholding. In this background, the Company was exonerated of the charge of wrong reporting under clause 35 of the Listing Agreement. This case is again distinguishable in as much as there was no role by the promoters except in forwarding wrong disclosures to the Exchanges. In the present case in hand, manipulation of shares of third parties by the promoter group is writ large and company, the Company Secretary and Chairman miserably failed to inform the stock exchanges about the true shareholding pattern of the promoters.

27. In the case of **Genex Laboratories Ltd. dated 13th September, 2013**, there were two allegations levelled against the Company; first related to non implementation of at least three corporate announcements which were not implemented by Genex and, therefore, they were held to be misleading in nature. The learned Whole Time Member very rightly held that Genex had made false

announcements in order to create an opportunity for the Chairman of the Company to off load his shares in the market at inflated price by generating artificial interest in the scrip of Genex. He was severely and rightly dealt with by the learned Whole Time Member in his order dated 13th September, 2013 by imposing extreme penalty of debarment (on the chairman Mr. Vinod Baid) from the market for three years. However, the learned Whole Time Member after due application of mind and in all fairness let off the Company of the charge of wrong disclosures of promoters shareholding pattern under Clause 35 of the Listing Agreement. In fact, by an error Bank of India (BOI), a pledgee of 25 lac shares of Genex, was wrongly assumed and shown as a promoter by the staff of the Company. It was held to be a bonafide error by the learned Whole Time Member in the facts of that case and the company was exonerated of this charge. This shows due application of mind on the part of the whole time member to the whole facts and circumstances of the case. Therefore, this case also does not advance the case of the present appellants in any manner.

28. Regarding the case of **UBS Securities Asia Ltd. Vs. SEBI.,** it would be pertinent to appreciate the background in which the principle of ambiguity in law crept in that case before this Tribunal while passing order dated September 9, 2005 in Appeal no. 97 of 2005. The appellant therein, namely, UBS Securities Asia Ltd. was a part of UBS Investment Bank, headquartered in New York and London. UBS had been a registered Foreign Institutional Investor with SEBI, *interalia*, involved in the transactions of Off-Shore Derivative Instruments.

29. On, May 17, 2004, there was a steep fall in the Indian Stock Market and the major stock exchanges had to stop trading twice. SEBI investigated the matter and, *primafacie*, found that UBS was a major participant, undertaking trades worth more than Rs. 625 crore on that day alone in the cash and derivative

segments. SEBI called upon USB to furnish various information relating to its clients. USB allegedly failed to do the same to the entire satisfaction of SEBI. Accordingly, a show cause notice dated November 24, 2004 was issued to UBS, *interealia,* stating that the UBS failed to comply with Know-Your-Clients requirement as per Regulations 15A and 20A of the FII Regulations, 1995 read with circular dated March 8, 2003. SEBI had, *interalia*, asked for the names and addresses of major shareholders, names of 5 top investors in respect of the major clients of UBS and even the names of ultimate beneficiaries. UBS Submitted that it was cooperating with SEBI by furnishing all the information which it was required to maintain as per the FII Regulations, 1995. Rejecting these contentions of UBS, SEBI treated it a case of violation of Regulation 15A which required compliance of Know-Your-Client and that of Regulations 20 and 20A as, firstly, UBS failed to record in KYC the same and secondly, to inform SEBI about the details of top 5 investors, shareholders, fund-manager and Directors of fund etc.

30. Under these circumstances, by order dated 17th May, 2005, SEBI in terms of Section 19 of the SEBI Act, 1992 read with Section 11(4) and 11B of SEBI Act, 1992, prohibited UBS / its affiliated/ agents from dealing in securities in the capital market in the manner prescribed in the Impugned order itself. UBS was further directed to establish highest standards of Customer Due Diligence process in line with the requirements of FII Regulations of SEBI.

31. The said impugned order was challenged by UBS before this Tribunal and after and taking into account all the submissions, documents, replies and affording an opportunity of personal hearing to the appellant, this Tribunal found that *"the regulator did not have a clear and explicit understanding of the KYC requirement. Had it been so, it would have been spelt out unequivocally instead*

of expecting the appellant to visualize and imagine the likely questions SEBI is to ask. It is an accepted principle of law that if anyone is to be punished for violation or infringement of any Act or Regulation he should clearly know the obligations which are required to be met under the law. If the legislature or the respondent had wanted to make the KYC unambiguous, it could have easily inserted or added the necessary words such as 'ultimate beneficiaries". This Tribunal, rightly finding ambiguity in Regulation 15A of FII Regulations, 1995 set aside the impugned order in that case and allowed the appeal. In the case in and, however, the requirement of law imposes a duty on the company, its officers and the promoters to disclose the shareholding of promoters. It simply means the law then in existence i.e. prior to December 3, 2009, required the company and promoters to disclose sheer number of shares which the promoters owned in their own-right and the law did not even remotely contemplate third party shares over which the promoters had no claim or right in law. The ambiguity was rather sought to be imported by the appellants by procuring various legal opinions.

32. In the case of **Mega Corporate Ltd. vs. SEBI, in Appeal no.60 of 2008 dated 15/10/2008,** the Whole Time Member of SEBI restrained the Appellant from accessing the capital market in any manner whatsoever for a period of one year for violation of regulations 3(a), (b), (c) & (d) and 4(1), 4(2)(k) and 4(2)(r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. The said order was challenged before this Tribunal.

33. It was held by this Tribunal that "To sum up, the main charge of manipulative trading in its own shares by the appellant fails in the absence of any link being established by the respondent Board between any of the traders with the appellant company. The charge of making false and misleading

announcements as also that of manipulation in the annual accounts of 2004-05 in order to lure investors also does not succeed. We have, therefore, no hesitation in allowing the appeal and setting aside the impugned order. No order as to costs."

34. One of the charges in the Mega Corporate Ltd. case was that the appellant therein manipulated the accounts for the year 2004-2005 to show inflated profits with a view to lure investors to buy shares of that company. The profit was entirely attributable to the company's income from trading in the shares of certain other companies whose shares were sold in March 2005 after having been already purchased during the same financial year. SEBI's allegation / charge against the company was that those transactions of shares never took place and the entire profit was fictitious. To support this allegation, SEBI relied upon the statement of one Mr. Dinesh Masalia, one of the Directors of the broker which was stated to have undertaken trades on behalf of the Mega Corporate Ltd. The whole case of the appellant (Mega) was that it had dealt only with its brokers in selling and purchasing said shares of three companies and earned profit. Therefore, the broker or his director alone would have been in a position to clarify the points and allegations raised by SEBI against Mega. Mega also produced atleast two cheques of Rs. 20 lac each signed by Dinesh Masalia on behalf of the broker and issued to the appellant towards dues of Mega on account of sale of scrips of three companies. In view of this documentary evidence, the statement of Dinesh Masalia could not have been relied upon by the Board to come to the conclusion that the trades undertaken by Mega in the scrip of three companies did not take place and the profits shown were fictitious. The Board relied upon the said statement of Dinesh Masalia without affording any opportunity to the appellant (Mega) to cross-examine and, therefore, this Tribunal rightly held that SEBI was in error in relying upon the said statement of

Dinesh Masalia to hold Mega guilty of the charges levelled against it. In this background, the Tribunal held that there was violation of principles of natural justice qua Mega.

35. Para no. 7 of the said judgment is reproduced hereinbelow:-

> "7. Before concluding, we would like to mention that there are statements made by several persons which are available on the records of this case and which have been stoutly denied by the appellant. These include the statements of two directors of the appellant's broker DPS to the effect that the purchase and sale of shares executed by DPS on behalf of the appellant company were completely false and fabricated and that payments were made to the appellant company on account of such dummy sales out of funds provided by the appellant company itself. There is also a letter addressed to the respondent Board by one Sanjeev Kathuria alleging the involvement of one of the directors of the appellant company in manipulative trading in its shares. The learned representative of the appellant company, apart from denying the allegations, demanded cross examination of the persons and because such cross examination was not allowed these statements could not be relied upon by the respondent. Considering that the respondent Board undertook a process of enquiry under section 11B of the Act which is quasi judicial in nature, we do not see any reason for the Board to shy away from allowing cross examination. In a situation where one persons's assertion is being directly contradicted by another, what could be a better way of arriving at the truth of the matter which is the only aim of an enquiry? Obviously, enquiries need not and should not be limited to examination of documents alone relying on statements recorded at the time of investigation. We trust that the respondent Board will take note of this position and allow examination as well as cross examination of witnesses during the process of enquiry, wherever necessary, whether by an enquiry officer or by a whole time member or by an adjudicating officer under chapter VIA of the Act."

36. Thus, the above analysis of Mega's case, clearly reveals that the present case of the appellants stands on an entirely different footing. In the case in hand, the appellants claim that they had included shares of third parties in their shareholdings on the basis of certain arrangements between the third parties and the appellants and some of the said parties (only 2 or 3 in number) had denied such arrangements. In the case in hand, it has been categorically held that the

appellants could not have included the shares of third parties into their shareholdings as per the law and hence have been rightly held guilty of violating the provisions of law by SEBI in the impugned order. This finding of SEBI is being upheld by this Tribunal in light of the discussion made hereinabove. Therefore, even if an opportunity to cross examine those 2 or 3 third parties was granted to the appellants, it would not have served any purpose and would also not have made any difference in the findings reached by SEBI. Hence such an opportunity would have been superfluous and a mere formality. Moreover, no prejudice shown to have been caused to the appellants by not granting the cross-examination of those 2-3 witnesses. There is sufficient material on record to prove the violations in question by the appellants which indeed formed the basis of the impugned order.

37. In **UPSE Securities Ltd. vs. The Manager, Inspection Department, National Stock Exchange of India Limited (NSE) by order dated December 9, 2011,** the National Stock Exchange of India Limited imposed a monetary penalty of Rs. 45,000/- on the Appellant for certain irregularities noticed by NSE during the course of inspection of the books of account. This order was challenged by the Appellant before this Tribunal. In this case, NSE conducted some inspection regarding the functioning of the appellant as a stock broker and found irregularities as regards implementation of certain norms prescribed by the NSE for maintaining separate ledger accounts for separate clients. However, there was no clarity in the NSE Guidelines regarding the maintenance of ledger account on account of a client who himself happened to be a sub-broker. NSE's Regulations were silent on this aspect. The appellant therein, therefore maintained only one ledger account for the clients who had also been acting as sub-brokers. Therefore, in the absence of any clarity in the NSE Regulation to the effect that even in respect of client who was acting in dual capacity i.e., as a

client and a sub-broker of the broker, separate account was required to be maintained in respect of the transactions as client and as sub-broker, this Tribunal allowed the said appeal and the penalty imposed by NSE on the said appellant in this regard was rightly quashed by this Tribunal.

38. Thus, these three appeals nos. 6, 7, and 8 of 2014 are liable to be dismissed.

Appeal Nos. 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of 2014 : The Ten Promoters in question.

39. In all these 10 appeals dispute relates to imposition of penalty of Rs. 2 lac for violating Regulation 7(1A), Regulation 8(2) of SAST Regulations, 1997 and a penalty of Rs. 5 lac on each of the appellants for violating Regulations 3(a), (b), (c) and (d), 4(1) and 4(2)(f) of FUTP Regulations, 2003 read with the provisions of Section 12A(a), (b) and (c) of SEBI Act, 1992. However, in appeal no. 9, there is an additional penalty of Rs. 2 lac for violating Regulations 13(3) and 13(5) of PIT Regulations, 1992. The issue regarding imposition of penalty of Rs. 5 lac each on these ten appellants for violating various provisions of FUTP Regulations in question has been dealt with in detail hereinabove in appeal nos. 6, 7 and 8 of 2014. All the contentions and arguments regarding violation of FUTP Regulations read with Sections 12A(a), (b) and (c) of SEBI Act raised and argued by Shri Shyam Mehta, learned senior counsel on behalf of these 10 promoters remain the same and identical as have been argued by Shri P. N. Modi, learned senior counsel. Therefore, we do not propose to reiterate the same. The case of the 10 promoters in respect of violation of FUTP Regulations, 2003 and provisions of SEBI Act in question is, therefore, rejected in view of finding and observations particularly given in paragraphs nos. 18 to 37 as

mentioned hereinabove. The only additional point raised by Shri Shyam Mehta, learned senior counsel who appeared on behalf of the 10 promoters is that the finding of the learned adjudicating officer in holding the appellants guilty of violation of Regulations 7(1A) and 8(2) of the SAST Regulations, 1997 is totally wrong and untenable. Shri Shyam Mehta has vehemently argued that the charge regarding "persons acting in concert" was never taken up in the show cause notice against these 10 promoters and was never proved during the course of enquiry as well. Therefore, the same must fail and these promoters be exonerated of the same. Shri Kumar Desai, learned counsel for the respondent, on the other hand, contended that this contention raised by the appellants is not tenable in view of the provisions of Regulations 7(1A), 8(2) of SAST Regulations, 1997 and definition of "person acting in concert" occurring therein. At the outset, in this context, we would like to reproduce Regulations 7(1A), 8(2), 11(1), 11(2) and definition of 'acquirer' and 'person acting in concert', etc. of SAST Regulations and definition of 'dealing in securities' and 'fraud' of PFUTP Regulations hereinbelow for the sake of convenience :-

SAST Regulations, 1997

"7(1A). Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11[or under second proviso to sub-regulation (2) of regulation 11], shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.]

[Explanation.- For the purposes of sub-regulations (1) and (1A), the term 'acquirer' shall include a pledge, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.]

8(2). A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by

persons acting in concert with him, in that company to the company.

11(1). No acquirer who, together with persons acting in concert with him, has acquired in accordance with the provisions of law, [15 per cent or more but less than [fifty five per cent (55%)]] of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than [5] per cent of the voting rights, [with post acquisition shareholding or voting rights not exceeding fifty five per cent,] [in any financial year ending on 31st March] unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

11(2). No acquirer, who together with persons acting in concert with him holds, fifty-five percent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through [or with] persons acting in concert with him any additional shares [entitling him to exercise voting rights] or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations :

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures ‘seventy-five per cent (75%), the words and figures ‘ninety per cent (90%)’ were substituted.

Provided further that such acquirer may, [notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11,] without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him up to five per cent (5%) voting rights in the target company subject to the following :-

(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal / block deal/ negotiated deal / preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy-back of shares by the target company;

(ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy-five per cent (75%).]

"2(b). "acquirer" means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer."

"2(e). "person acting in concert" comprises, -

(1) person who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company,

(2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established :

(i) a company, its holding company, or subsidiary or such company or company under the same management either individually or together with each other;
(ii) a company with any of its directors, or any person entrusted with the management of the funds of the company;
(iii) directors of companies referred to in sub-clause (i) of clause (2) and their associates;
(iv) mutual fund with sponsor or trustee or asset management company;
(v) foreign institutional investors with sub-account(s);
(vi) merchant bankers with their client(s) as acquirer;
(vii) portfolio managers with their client(s) as acquirer;
(viii) venture capital funds with sponsors;
(ix) banks with financial advisers, stock brokers of the acquirer, or any company which is a holding company, subsidiary or relative of the acquirer :

Provided that sub-clause (ix) shall not apply to a bank whose sole relationship with the acquirer or with any company, which is a holding company or a subsidiary of the acquirer or with a relative of the acquirer, is by way of providing normal commercial banking services or such activities in connection with the offer such as confirming availability of funds,

handling acceptances and other registration work;

(x) any investment company with any person who has an interest as director, fund manager, trustee, or as a shareholder having not less than 2 per cent of the paid-up capital of that company or with any other investment company in which such person or his associate holds not less than 2 per cent of the paid-up capital of the latter company.

Note : For the purposes of this clause "associate" means, --

(a) any relative of that person within the meaning of section 6 of the Companies Act, 1956 (1 of 1956); and
(b) family trusts and Hindu undivided families."

40. An analysis of the above provisions of SAST Regulations demonstrates that violation of Regulation 11(1) is a pre-condition for attracting the provisions of Regulation 7(1A). It is nowhere brought on record by the respondent that anyone of the 10 appellants on stand alone basis was ever holding more than 15% shares. Similarly, it is also not pointed out that any one of the promoters individually acquired or sold more than 2% shares so as to attract Regulation 7(1A). In fact, there is no allegation in the show cause notice dated December 12, 2011 that anyone of the 10 appellants is a "person acting in concert" with other promoter entities. Pleadings show that all the appellants specifically submitted that they were not acting in concert with each other. Moreover, we find that the concept of "person acting in concert" as reproduced hereinabove is primarily meant for "acquisition of shares or control" and not for any other purpose. Moreover, Regulation 7(1A) requires an individual acquirer to disclose regarding any change in its shareholding if it goes 2% up or down and for the purpose of calculating such change of 2% shareholding, the shareholding of "person acting in concert" may not be clubbed unless they admittedly act in concert. Therefore, clubbing of the shareholdings of various promoter entities,

without proving that they were persons acting in concert with each other by cogent and convincing evidence is untenable in law and such a finding is liable to be quashed and set aside qua the appellants in these 10 appeals as far as the violation of Regulation 7(1A) of FUTP Regulations is concerned.

41. Further, Regulation 7(1A) of SAST Regulations casts an obligation on a person to disclose purchase or sale of shares of a company to the stock exchanges within two days of such purchase or sale only if following four conditions are fulfilled.

a. A person is an acquirer;
b. That person acquired shares or voting rights;
c. Such acquisition is under sub-regulation 1 of Regulation 11; and
d. Purchase or sell aggregates 2% or more of the share capital of the company.

42. Thus, all the above four ingredients must be satisfied before attracting the provisions of Regulation 7(1A). A person may be acquirer under SAST Regulations but may not acquire shares as a "person acting in concert" with other and as such he shall not be obliged to make disclosures under Regulation 7(1A) of the SAST Regulations unless he individually crosses the threshold of 2%. In the case in hand the learned adjudicating officer has not recorded any specific finding that there was an understanding or agreement, direct or indirect, among the 10 appellants. In the absence of any such finding or evidence on record, none of the 10 appellants can be held guilty of violating Regulation 7(1A) of the SAST Regulations, 1997.

43. At this stage, we may also deal with an additional allegation levelled only against M/s. Carissa Investment Pvt. Ltd., the appellant in appeal no. 9 of 2014 regarding violation of Regulations 13(3) and 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (for short PIT Regulations, 1992). The charge is that the appellant failed to make disclosure to the stock exchange

regarding 2% change in the shareholding within 4 days of such triggers. According to SEBI, this was required to be done by the appellant along with its aggregate shareholding as per Regulations 13(3) and 13(5) of the PIT Regulations, 1992. The learned adjudicating officer has, rather surprisingly not given any plausible reasoning for holding Carissa liable for violation of this charge except a faint finding in paragraph 15 of the impugned order dated October 25, 2013 to the effect that "in the absence of any reasonable justification from the noticee, we find that noticee has violated Regulations 13(3) and 13(5) of PIT Regulations." We are afraid the learned adjudicating officer could have given such finding qua Carissa without analyzing the charge, the evidence, if any, and the legal provisions applicable in the case. Nothing of the sort has been even sought to be attempted by the learned adjudicating officer before rendering such an unwarranted finding on violation of Regulations 13(3) and 13(5) of the **PIT Regulations, 1992** which read as under :-

PIT Regulations, 1992

"13. Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies - Initial Disclosure.

(1) ……
(2) ……..
(3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulations (1) or under this sub-regulation and such change exceeds 2% of total shareholding or voting rights in the company."
(4) …….
(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 working days of :
(a) The receipts of intimation of allotment of shares or
(b) The acquisition or sale of shares or voting rights, as the case may be."

44. If we simply read Regulations 13(3) and 13(5) of the PIT Regulations, we note that a person or promoter is required to make a disclosure to the stock exchange if his shareholding undergoes 2% alongwith his aggregate shareholding. Thus, this provision is almost pari-materia with the provisions of Regulation 7(1A) of the SAST Regulations, 1997. A comparative analysis of these provisions i.e. Regulation 7(1A) of SAST Regulations, 1997 and Regulations 13(3) and 13(5) of PIT Regulations clearly points out that both these provisions are substantially the same and rather seek to achieve the same objective by such disclosures. Therefore, it becomes apparent that the said two provisions are not stand alone Regulations and one is corollary of other. Violation of Regulation 7(1A) of SAST Regulations, 1997, if any, would automatically trigger violation of Regulations 13(3) and 13(5) of the PIT Regulations, 1992.

45. Since we have already held that the charge of violation of Regulation 7(1A) of SAST Regulations, 1997 has not been proved against the ten promoters, including Carissa which is one of the ten promoters, the charge of violation of Regulations 13(3) and 13(5) of PIT Regulations, 1992 qua Carissa must also fail.

46. In the totality of facts and circumstances of these 10 appeals, they are partly allowed. Thus, The penalty of Rs. 5 lac imposed on each of the appellants for violation of FUTP Regulations read with Section 12(A)(a) of the SEBI Act, 1992 is upheld whereas penalty of Rs. 2 lac imposed on each of the

appellants for violation of Regulation 7(1A) of SAST Regulations is quashed and set aside. Ordered accordingly.

In the result, thus, appeal nos. 6, 7 and 8 of 2014 are dismissed and appeal nos. 9 to 18 of 2014 are partly allowed in terms of abovesaid.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A. S. Lamba
Member

31.07.2014
Prepared & Compared by
RHN / PTM